

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN (76D)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Julie Munro; Drew N. Munro

OBJECTOR: United States of America (USDA Forest Service)

**CASE 76D-0219-R-2022**  
76D 129018-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## **MASTER'S REPORT**

### **Statement of the case**

The United States of America (USDA Forest Service) (“USDA Forest Service”) filed an objection to all elements and abandonment of the above captioned claim.

The claim also received an issue remark. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Montana law requires the Water Court to resolve issue remarks.

The Water Master held a status conference to discuss the objection to and issue remark appearing on the claim. Claimants failed to appear. The USDA Forest Service requested time to file a suggested resolution of its objection and evidence in support.

On May 26, 2023, the USDA Forest Service filed its proposed resolution of objection. Pursuant to Rule 22, W.R.Adj.R., a deadline was set for claimants to Show Cause why the claim should not be dismissed. Claimants did not respond by the deadline.

### **Issue**

Should mining claim 76D 129018-00 be dismissed?

### **Finding of fact**

Mining claim 76D 129018-00 should be dismissed.

### **Principles of law**

1. A properly filed Statement of Claim for Existing Water Right or an amended claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*,

2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.

2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. All parties subject to the jurisdiction of the Montana Water Court in this adjudication have the obligation to comply with Orders of this Court, including Orders issued by a Master appointed by the Court. When a claimant fails to comply with an Order issued by the Water Court, including an order issued by a Water Master appointed by the Court, the Court upon its own initiative or upon motion, can among other actions: 1) modify the elements of the claim to conform with the information in the claim file, information obtained by the Court, or information included in an objection, or 2) terminate the claim. Rule 22, W.R.Adj.R.

4. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

## **Analysis**

### **Objection, sanction, and dismissal of claim 76D 129018-00**

The USDA Forest Service filed evidence that since at least 1994, mining permits have been closed for the legal land descriptions identified by the claim and no evidence of mining activity is visible on 1995, 2009, and 2020 aerial photography. (See May 26, 2023 Response to Court Order, Ex. 1, Declaration of Thor Burbach; Ex. 3-4 Mining Claim Geographic Index Reports; Ex. 5-7, Google Earth aerial imagery.)

### **Conclusions of law**

Based upon the USDA Forest Service's evidence, and the claimants' repeated failure to comply with orders issued by the Water Master, the requested sanction appears just. The USDA Forest Service's objection is resolved and the issue remark is moot.

## **Recommendations**

Mining claim 76D 129018-00 should be dismissed.

The issue remark appearing on the claim abstract is mooted by the dismissal of the claim.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm dismissal of the claim in the state's centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW**

### **Service via USPS Mail**

Julie Munro  
Drew N. Munro  
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### **Service via Electronic Mail**

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
KOOTENAI RIVER  
BASIN 76D**

**Water Right Number:** 76D 129018-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** DISMISSED

**Owners:** DREW N MUNRO  
207 DOAK CREEK RD  
LIBBY, MT 59923  
  
JULIE MUNRO  
207 DOAK CREEK RD  
LIBBY, MT 59923

**Priority Date:**

**Type of Historical Right:**

**Purpose (use):** MINING

**Flow Rate:**

**Volume:**

**Source Name:** UNNAMED TRIBUTARY OF KOOTENAI RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

**Period of Use:**

**Place of Use:**

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**Remarks:**

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.